

Warrick County
School Corporation

Brad Schneider, Superintendent
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SUPERINTENDENT'S OFFICE

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Tuesday, July 24, 2018

Marlene H. Dortch, Secretary
Federal Communications commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554

Appeal of a USAC Funding Decision

CC Docket No 02-6 – In the Matter of Schools and Libraries Universal Service Support
Mechanism

Billed Entity Name:	Warrick County School Corporation
Billed Entity Number:	130695
471 Number:	161050880
FRN:	1699125323

Dear Ms. Dortch:

We are appealing to the FCC a recent denial of a requested service delivery extension made by USAC staff about a FY 2016-2017 FRN.

SUMMARY

Warrick County School Corporation (Warrick) applied for E-Rate funding to cover Category Two eligible installation work necessary to upgrade the networks in their 16 instructional buildings. **Due to delays in the receipt of the approval of this funding** (FCDL attached), this work was not completed by the service delivery deadline (September 30, 2017).

Warrick filed an FCC Form 500 (attached) requesting that this service delivery deadline be extended. The Form 500 was filed before the service delivery deadline and cited a valid reason for the request—that the project was delayed for reasons beyond the service provider's control.

We respectfully request that the FCC overturn USAC's decision to deny a service delivery extension or grant a waiver of its rules so that Warrick may receive funding for the \$720 worth of work completed under this FRN after the September 30 deadline.

BACKGROUND

Warrick planned a full network upgrade for their 16 instructional buildings for the 2016 funding year. The work was divided into four sections at each building and three vendors were selected via the competitive bidding process to complete the work. The original intent was that work would begin as soon as classes ended in these schools (June 2016), but budgets constraints required that E-Rate commitments be approved prior to the commencement of work. The funding approval was not received until January 9, 2017, which meant that the service providers had lost the better part of eight months of work, including the all-important uninterrupted work of an entire summer.

Because of the nature of the work, during the school year, work hours were restricted to hours after classes had ended for the day to avoid affecting students. This restricted service providers' efforts to make up the lost time and meet the original service delivery deadline of September 30, 2017. Once the E-Rate funding commitment was received, the service providers worked diligently to complete the project. Of the 57 FRNs approved for FY 2016, the service providers were able to fully complete the work under 32 FRNs and partially complete the work under most of the remaining FRNs. But the late start, which led directly to restricted work hours, kept the service providers from matching the pace originally planned for unrestricted summer work and work under the FRN covered by this appeal was not completed by the original September 30, 2017 service delivery deadline.

Because the project was not complete, the district requested a service delivery extension using the Form 500 on September 15, 2017—prior to the September 30 deadline as required by Commission rules.

The Form 500 service delivery extension request for FRN 1699125323 was dismissed February 22, 2018 with the following text: "The FRN referenced in your request has been reimbursed the entire amount of the funding commitment."

This rationale was untrue and so Warrick appealed this dismissal (attached) within the required timeframe and clearly demonstrated that no funding had been disbursed against this FRN and went on to demonstrate how the delay of the FCDL was an circumstance beyond the service provider's control, justifying the service delivery extension requested in the dismissed Form 500.

Warrick's appeal was denied (RFCDL attached) with the following explanatory text:

"The rationale provided on the Form 500 # 67309 was incorrect. The funding has not been disbursed for this FRN. However, the appeal is denied for the following reason:

"FCC Rules related to the payment of support for discounted services establish deadlines for service providers to deliver services/products to the applicant. The FCC provides an extension of this deadline under certain conditions. Those conditions are documented in the USAC website at: <http://www.usac.org/sl/applicants/before-youre-done/delivery-extension.aspx>. Your request did not provide information that satisfied those conditions.

Your appeal has not brought forth clear information establishing that those conditions were met but not considered. Therefore, your appeal is denied."

DISCUSSION

FCC rules establish the four reasons for which USAC should approve a service delivery extension request. Only one of the options must be satisfied for the service delivery extension to be granted. The FCC's rule states that extensions shall be approved if "the service provider was unable to complete delivery and installation for reasons beyond the service provider's control."¹

Here, the service provider was unable to complete delivery for reasons beyond their control. The service provider prudently waited to begin the work until the district had received a funding commitment from USAC. As you are aware, a funding commitment in the E-Rate program is far from a guarantee. If a school district cannot afford the entire cost of the services absent E-Rate funding, then it makes sense to wait until a commitment is received. Otherwise, the district could end up with equipment that it cannot pay for.

Obviously, service providers have no control of any of the E-Rate funding application process, and no one but USAC has control of the approval process. The commitment for the work Warrick planned was issued in the middle of the school year. The funding approval date of this FY 2016 work directly led to unrecoverable scheduling delays for the entire project.

As the Commission has acknowledged, it is difficult for schools to install significant upgrades to their Category 2 internal connections while school is in session. The Commission set the Category Two service delivery deadline on September 30th following the funding year to help account for this issue.² Work hours unimpeded by the need to not disturb the student learning environment or interrupt the school network during class time can be vital to the successful completion of a network upgrade project. While it is possible for installation work to take place during the regular school year, this work must be done after normal work hours or during the weekend – raising the cost of a project with shift premium or differential time pay. Summer work hours therefore are the most cost-effective time for any work on an instructional building

¹ 47 C.F.R. § 54.507(d)(4)(iii).

² 47 C.F.R. § 54.507(d)(4)(i).

and any summer hours lost can be an unrecoverable scheduling loss to a project with a fixed budget.

Warrick's project needed two summers and several District holidays to complete, but because of the delay of the funding commitment, it only had one Spring Break and one summer to perform the work. The service providers did their best to complete the work and indeed, the vast majority of the work was finished by the September 30 deadline.

REQUESTED ACTION

Because Warrick's service implementation extension request satisfied one of the options identified by the Commission as justifications for an extension of service delivery deadline, the Commission should grant its appeal. Warrick asks that the FCC reconsider the USAC denial of a service delivery deadline extension for FRN 1699125323.

If the Commission believes that Warrick did not satisfy the criteria, we respectfully ask that the Commission grant a waiver. The Commission may grant a waiver for good cause shown and if it is in the public interest. Nearly all of the work was completed by the September 30th deadline. In comparison to situations where the applicant failed to adhere to "core program requirements" or misused funds, the Commission has stated that E-Rate funding should not be denied for procedural errors.³ Even where the deadline missed was a Commission rule, the Commission has found that non-substantive errors do not warrant denial of funding.⁴

The Commission has further noted that decisions should be made with the "big picture" in mind: "[a]lthough deadlines are necessary for the efficient administration of the program, in these cases, the applicants have demonstrated that rigid adherence to such procedures does not further the purposes of section 254(h) of the Telecommunications Act of 1996 or serve the public interest."

There is no question here that eligible services were delivered to eligible schools, as required by Congress. There is no waste, fraud or abuse of the E-Rate Program. All of the Commission's application and competitive bidding rules were followed. A waiver of the service delivery deadline, if necessary, would simply allow the service provider to be paid for work they have already done.

³ See, for example, *Requests for Review of the Decision of the Universal Service Administrator by Alpaugh Unified School District et al.*, File Nos. SLD-523576, *et al.*, CC Docket No. 02-6, Order, 22 FCC Rcd 6035 (2007) (*Alpaugh Unified School District Order*); *See Request for Review of the Decision of the Universal Service Administrator by Academy of Math and Science, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487009, *et al.*, CC Docket No. 026, Order, FCC 10-122 (released July 8, 2010) (*Academy of Math and Science Order*).

⁴ *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, *et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5319, para. 9 (rel. May 19, 2006) (*Bishop Perry Middle School*);

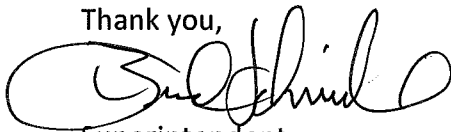
Further, a strict application of this deadline would encourage service providers to charge more to account for overtime and after-hours work during the school year, which would increase costs for both applicants and the E-Rate program.

As such, denial of funding in this case would not further Congressional purpose for the program, the Commission's own program goals, or serve the public interest.

We also request any other procedural waivers necessary for Warrick to receive its approved funding, including but not limited to, an invoice deadline waiver for this FRN. For the reasons described above, it would be in the public interest to allow Warrick this service delivery extension.

Thank you for your time and consideration. You are hereby authorized to contact our E-Rate Contact, Darsey Carnal, at 317-581-0169 or darsey@adtecerate.com if there is any additional information necessary for your review of our appeal of the service delivery extension denial for FRN 1699125323.

Thank you,

A handwritten signature in black ink, appearing to read "B. J. Smith", written over the printed name "Superintendent".

Superintendent

Warrick County School Corporation

Attached:

- Original FCDL for 471 161050880
- FCC Form 500 # 67309 requesting service delivery extension
- RFCDL for the Form 500
- USAC Appeal #92673 and the resulting RFCDL